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Legal Protection of Health Rights for Indonesian Migrant Workers Overseas

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Abstract

The right to work and the right at work are part of the human rights. The fulfillment of these rights for the citizens who work gives an important sense to reach a good living standard. Health rights of Indonesian migrant workers are regulated in the Constitution No. 18 year 2017 on the protection of Indonesian migrant workers. This legal protection for Indonesian migrant workers includes rather wide aspects, such as the protection of safety, health, the maintenance of work ethics, also rightful treatments according to the human dignity and the religious morals.

Legal protection of health for the migrant workers are part of the efforts to maintain and to increase their physical and mental health degree, as well as letting them reach social welfare. The host country of the Indonesian migrant workers must give insurance of health rights. The five favorite destination countries of Indonesian migrant workers are Malaysia, Singapore, Taiwan, Hongkong, and Saudi Arabia. Those five countries have regulations in giving health rights insurances for Indonesian migrant workers.

Keywords : legal protection, health rights, Indonesian migrant workers.

BACKGROUND

The 1945 Constitution states that every person has the right to work, to receive wages, and to obtain just treatments in work relations. This normative

stipulation confirms the constitutional rights to work and the rights in work.¹ The right to work and the right in work are part of the human rights. Legal protection and fulfillment for the citizens who work give an important sense to achieve a good standard of living². The government has the obligation to realize the rights to work for the citizens as well as possible.

Work is an application of the mandate of human existence. Work can be chosen freely, whether it is within the country or overseas. The country has the obligation to provide work for the citizens well and give positive influence for their survival without discrimination.³ Indonesia is one of the largest senders of migrant workers. Formerly, the term Indonesian migrant workers were called Indonesian work force (*tenaga kerja Indonesia/TKI*). They are every Indonesian citizen who fulfill the requirement to work overseas in work relations for a certain period of time and they must also receive wages for their work,⁴ both based on the request of the sending country or from the initiative of the destination country of the migrant workers overseas.⁵

Indonesia's contribution in sending work forces overseas, in the social aspect and in the development aspect have some positive impacts. It aids the country's foreign exchange, it opens up new work fields, it minimizes the pressure of problems, it lets citizens experience obtaining high wage, and it decreases the number of unemployment. If we see the meaning and the aim of sending Indonesian migrant workers overseas in the wider sense, it does not only solve the pressuring problem of the Indonesian work force, yet it is also a form of the

¹Wafda Vivid Izziyana. 2018. *Hukum Ketenagakerjaan*, Ponorogo: Unmuh Ponorogo Press. Hlm 12.

² Jeff King. 2003. Menegaskan. *The Right to work is considered a right of Fundamental importance for both intrinsic and instrumental reason. It is of intrinsic importance because work is a fundamental part of our daily life activity, and is therefore an expression of our spirit and a strong determinant of our happiness.* Lihat lebih lanjut Jeff King. *An Activist's manual on the International covenant on economic, social and cultural right*. Colombo : Center For Economic and social Right. page 56

³ Wafda Vivid Izziyana. 2018. *Hukum Outsourcing Di Indonesia*. Ponorogo : Unmuh Ponorogo Press. Hlm 3

⁴ Simanjuntak Payaman. 2003. *Manajemen Hubungan Industrial*. Jakarta: Pustaka Sinar Harapan. Hlm 35

⁵ Data penempatan dan perlindungan tenaga kerja Indonesia. Pusat Penelitian dan pengembangan informasi Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia Tahun 2016. Hlm 4

migrant workers' financial improvement. Working overseas is an effort to resolve the workforces' problems in their country/city of origin⁶.

The existence of Indonesian migrant workers is one of the sectors which can drive the economy of Asian countries. The high number of migrant workers overseas on one hand has some positive impacts, such as increasing the country's foreign exchange and resolving unemployment, though it also has some negative impacts, such as the risk of inhumane treatment to the migrant workers.⁷ A legal protection insurance for the migrant workers is very important. Parallel to the increasing interest of citizens to become migrant workers, the number of inhumane treatment to those migrant workers overseas have also increased.⁸ Cases which have to do with the migrant workers' fate increasingly varies, and they have even developed towards a form of human trafficking which may be categorized as a violation of human rights.

The insurance for health rights⁹ of Indonesian migrant workers is regulated in the Constitution No. 18 year 2017 regarding the protection of Indonesian migrant workers. The legal protection for Indonesian migrant workers include a wide array of aspects, such as the protection of safety, health, the maintenance of work morals, and also the treatment according to the human dignity and the religious morals. The protection for the migrant workers' health is an effort to maintain and to increase the degree of physical and mental health, as well as the social welfare of all workers as high as possible¹⁰.

The effort of the occupational health and safety has the aim to give an insurance of safety and to increase the degree of the workers' health by avoiding accidents and diseases caused by work, the control of danger at work and the promotion for treatment and rehabilitation. The effort for legal protection in the

⁶ Bachtiar, 2004. *Blue Print Kebijakan Ekspor Jasa TKI ke Luar Negeri*. Makalah. Dalam Lokakarya Ketenagakerjaan yang disampaikan di Kantor BAPPEDA Tk I. Propinsi Sumatera Barat, 14/4/2004. Hal 16

⁷ Ana Sabhana Azmy, 2004-2010, *Negara dan Buruh Migran Perempuan (Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudoyono)*. Jakarta: Yayasan Pustaka Obor Indonesia. Hlm 12

⁸ Agusmidah, 2011, *Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum*, Jakarta : sinar grafika. Hlm 23

⁹ Arief Budiono Et Al. 2018. *Pseudo National Security System of Health in Indonesia*. Indian Journal of Public Health Research and Development. Vol. 9. No 10. Page 556-560

¹⁰ Wafda Vivid Izziyana et al. 2018. *Health Insurance for Indonesian Migrant Workers*. Medico Legal-Update Journal. Vol 19. No. 1. Page 188-193

aspect of occupational health and safety, in the aspect of humanity, is based on the fact that taking care of health and safety is the basic right which must be obtained by workers. The principle of occupational health and safety is a principal factor which cannot be negotiated, as mentioned in one of the rules of fiqh, where all kinds of harm must be eliminated.

All parts of its execution cannot be separated from the element of virtue, both in the form of responsive protection, where there exists a mechanism if the migrant workers are sick, or if they experienced an occupational accident, also in the form of preventive protection, like not giving work responsibilities which are over the workers' abilities, and not giving bad treatments to the workers. Such protection towards the workers or the labor is parallel with the vision of humanity.

RESEARCH METHOD

This research uses a doctrinal approach of analysis. The first stage is undergoing legal inventarisation to find legal norms which regulate the health rights of migrant workers, in which the sources are the constitutional laws or policies. This activity is then continued with a normative analysis, to find the in-concerto law (which comes from an analysis of secondary data with the legal consitutions which apply) and the legal principles (which come from the analysis of secondary data with the Islamic laws) which regulate the health rights of Indonesian migrant workers.¹¹

RESULTS AND DISCUSSION

The favorite destination countries of Indonesian migrant workers are Malaysia, Singapore, Taiwan, Hongkong, and Saudi Arabia. From those five countries, these are their policies to fulfill the health rights of the Indonesian migrant workers.

First is Malaysia. The protection of the health rights of Indonesian migrant workers are covered by the *Workmen's Compensation Act 1952* and insurance policies which will be pai by the employers. The *Workmen's Compensation Act*

¹¹ Sanapiah Faisal, *Penelitian Kualitatif : Dasar-dasar dan Aplikasinya*, Malang: Yayasan Asah, Asih, Asuh, 1988, hal. 57

1952 will soon be abolished, and it will be substituted by the Socso regulation in which its benefits are larger. This discourse is planned for the Indonesian migrant workers in the aspect of health insurance, by paying the amount of around RM14 to RM15 every month to Socso. Thus, the workers will receive plenty of benefits as they are protected by the insurance, and they will receive compensations for the rest of their lives. The payment to Socso for the migrant workers will be the burden of the employer. Socso owns one of the best hospitals in Southeast Asia in Melaka, and if there occurs an occupational accident, it is expected that the victim will receive full treatments until they recover their health.¹²

Second is Singapore. The Indonesian migrant workers, both in the domestic and in the non-domestic sector are obliged to obtain insurance from the employers. This insurance is an obligation of the employers, based on the governmental decree of Singapore. The right of health for Indonesian migrant workers are clearly stated in the *Employment act chapter 91 in Part Xi Health, Accomadation and Medical Care*, therefore the health rights of the migrant workers are covered well. The health insurance and the accidental insurance are included as some of the requirements to employ the Indonesian migrant workers. The health insurance is used to give basic protection such as inpatient or surgery. Apart from that, it can be used for conditions which are perhaps unrelated to work. If the Indonesian migrant workers experience sickness while on holidays or on resting days, thus the employer must be responsible for the disease treatment payment. Compensation for occupational accident insurance must be paid to the Indonesian migrant workers or their family. The occupational accident consists of death insurance, accidental insurance or permanent disability. These compensations can be given if the occupational accident happens while their stay in Singapore.¹³ The employers who do not give nor do not take burden of the occupational health and accident insurance for the Indonesian migrant workers are regarded as having violated the rule. If proven guilty, the employer who did not pay for the insurance will receive a fine or they will be sent to prison.

¹² Neni Kurniaty, Staf KJRI Penang pelaksana fungsi konsuler II, *Wawancara Pribadi*, senin 26 februari 2018 jam 13.00, di kantor KJRI Penang Malaysia.

¹³ Sonny Crouce Silaban, Asisten Atase Perhubungan, *wawancara pribadi*, Kamis 21 Oktober 2017, jam 15.00 WIB, di Disnaker Jakarta Barat

Requirements of the employment contract which must be fulfilled by the employers in Singapore include occupational accident insurance, making sure of the rights to undergo religious rituals, and not giving work tasks which endangers the safety of the workers. The abundant cases of where the health insurance of the Indonesian migrant workers are not covered triggers the application of these new policies. The main aim of these policies are to “give better protection for the Indonesian citizens”. These policies will not decrease the interest of recruiters in Singapore to employ Indonesian migrant workers. The government of Singapore, through the Ministry of Labor, also implements a similar policy in which its target is to give protection to the migrant workers who work in the Lion State, with the total insurance of 5.000 Singaporean dollars. In the other hand, the distributors of the migrant workers admit to feeling burdened with the scheme of this insurance policy, which are implemented by Singapore as well as the origin country of the Indonesian migrant workers.¹⁴

Third is Taiwan. The Indonesian migrant workers in Taiwan receive health insurance in which its premiums are paid by the employers. The health insurance of the Indonesian migrant workers is insured by the Taiwanese government, as stated by the law of this country. The National Health Insurance (NHI) program is one of the benchmarks of the international health insurances, as it offers treatment with high media which is also cost effective, and which applies to every citizen.

The policy of the labor system in Taiwan obliges all employers to register their workers to the health insurance. Even though the insurances in Taiwan are given by independent companies, all Indonesian migrant workers who are employed both legally and illegally are protected in the access of healthcare through insurance.¹⁵ The requirements of the insurance: (1) The migrant workers experience accidents which stops them from working, so that they do not receive wages according to the employment contracts, so the migrant workers have the

¹⁴ Kathy Nantalia Sari, Kasubag Administrasi Kerjasama Luar negeri, Biro Perencanaan dan Administrasi Kerjasama Luar Negeri, *Wawancara Pribadi*, tanggal 8 februari 2018, jam 11.00, di kantor BNP2TKI Jakarta

¹⁵ Fahri Hamzah, Wakil DPR RI, *Wawancara Pribadi*, Selasa 15 mei 2018, di gedung DPR RI Jakarta.

right to obtain treatment, starting from the fourth day of the healing process. (2) Inpatient in hospitals which makes the migrant workers unable to obtain the rights of wages, thus they will receive accidental help, starting from the fourth day of the treatment. These requirements can be obtained by the migrant workers if proposed by the employer or by the agencies.

Fourth is Hongkong. This is one of the countries which have the best healthcare treatment, starting from healthcare services, healthcare facilities, as well as professional health workers.¹⁶ The healthcare services in Hongkong can be accessed with low budget for Hongkong citizens. HKSAR allocates the budget for as many as 7 million people with the amount of US\$ 5.8 billion, or the same as US\$ 830 per capita, which is 250% higher per capita than the healthcare budget allocated in the USA¹⁷.

The healthcare system in Hongkong copies the healthcare services in England. Hongkong establishes healthcare services which are coordinated through the food and health bureau. This bureau establishes holistic health services which may be accessed by all parties in Hongkong. It insures that there will be no late treatments in medical emergencies. The migrant workers, in emergency cases which risk their survival, may access this service without discrimination. The health services in Hongkong consist of comprehensive services which may be accessed through the CSSA scheme. It includes 90% of hospitals and 29% of non-hospital medical services. It provides cheap hospital services, which is only US\$ 13/day with a 95% subsidy from HKSAR (with the subsidy, the estimated rate per day is only US\$1-2).

This grand subsidy makes healthcare services in Hongkong easy to be accessed by migrant workers who need health services¹⁸. Apart from the subsidized services from the HKSAR healthcare insurances, there are also private health services with premium payment (full payment). The migrant workers may

¹⁶ Hoft j, 2014. Hong Kong healthcare system makes US system look like third world nightmare. <http://www.thegatewaypundit.com/2014/12/hong-konghealthcare-system-makes-us-system-look-like-third-world-nightmare/?PageSpeed%4noscript>. di unduh pada tanggal 14 September 2018 pukul 10.00 wib.

¹⁷ James Goodman, 2014. Hong Kongs health care system is number one. <http://healthblog.ncpa.org/hong-kong-health-care-system-is-number-one>. [accessed February 2019].

¹⁸ Sholahudin, Atase Teknis Tenaga Kerja, *Wawancara Pribadi*, Rabu, 21 Maret 09.00 di kantor kemenaker Jl gatot subroto No.5

choose the service which is most suitable, but the data shows that only 11% of migrant worker patients choose to access the premium healthcare services without healthcare insurance, with the market price of around ten times more expensive compared to the subsidized services with the CSSA scheme. This private service provides better access in terms of medical equipments¹⁹.

Generally, there are two healthcare services in Hongkong which may be accessed by migrant workers. One of them is the subsidized public healthcare service with the social welfare scheme from CSSA, which may be accessed limitedly with the requirement of having lived in the country for a minimum of 1 year and the complete social welfare which may be accessed freely after having lived in the country for at least 7 years. The CSSA system may be accessed by the migrant workers who own valid visas which still apply, and complete work permits. Meanwhile, complete social insurances can be accessed with HKSAR PIC (Permanent ID Card). Illegal migrant workers, in emergency situations, also have the right to access healthcare services until they are saved. The healthcare institutions which treat the illegal migrant worker patients are obliged to report to the authorities (the police) so that a legal process may be done and to pay for the healthcare services. The police will inspect the illegal migrant workers after they are claimed healthy by the healthcare instances²⁰.

Fifth is the Kingdom of Saudi Arabia. Kafeel have the responsibility for the fees of recruitment, thorough health checkups, and the ownership of iqama (the Saudi Arabian identity card). The mentioned thorough health checkup includes checking for HIV/AIDS as well as giving meningitis immunizations, which are part of the requirements for migrant workers to enter Saudi. Article 117 of the Royal Decree states that if the migrant workers are sick, they must still receive full payment for 1 month. The Indonesian migrant workers in Saudi Arabia who experience sickness for two months may be terminated from the contract, migrant workers for three months or 90 days.

¹⁹ Tao J. 2007. Medical Care System and Reform In Hongkong. Medical Philosophy of Journal. Vol 35. No 13. Page 34

²⁰ Wong EL, Coulter A, Cheung AW, Yam CH, Yeoh EK, Griffiths SM. 2012. *Patient experiences with public hospital care: first benchmark survey in Hong Kong*. Hong Kong Medical Journal. Vol 37. No 18. Page 80.

The migrant workers may receive the sponsors' permit to access healthcare services. This permit includes work permit documents in Saudi Arabia. This access regards the kafeel's access as the local citizen. The healthcare fee in Saudi is usually very affordable, as the kingdom's government provides a large amount of subsidy. The Kafeel may easily abolish the visa permits of the migrant workers if there exists a problem, such as if the migrant workers run away from their work, even if their rights as migrant workers are not fulfilled, for example if they are not paid, or if they are not given healthcare insurances in which according to the regulation must be paid by the Kafeel. The migrant workers may access healthcare services without discrimination and with the same fee as what must be paid by the Saudi Arabian citizens.

CONCLUSION

Legal protection for health rights of the Indonesian migrant workers is a form of effort for legal protection in the aspect of occupational health and safety. It is based on the fact that the protection of health and safety are basic rights which must be obtained by the Indonesian migrant workers. The principle of occupational health and safety is the main factor which is unnegotiable, as it is a form of humanity, that all kinds of harmful actions must be eliminated. The fulfillment of health rights²¹ is a requirement of employing Indonesian migrant workers overseas, with the destination countries such as Malaysia, Singapore, Taiwan, Hongkong, and Saudi Arabia. So far, these countries have sufficiently taken care of the health rights as regulated in each of the country's regulations. The deal in the fulfillment of health rights for Indonesian migrant workers in the destination country have been agreed upon together through the employment contracts between the employers and the Indonesian migrant workers.

Additional Information:

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²¹ Arief Budiono et al. 2019. *The Anachronism of Indonesian Social Security Policy in Health*. Medico Legal-Update Journal. Vol 19. No. 1. Page 229-234

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